IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8427 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LALAJIBHAI TEJSINHBHAI SATRA - Petitioner
Versus
STATE OF GUJARAT & 3 ors.- Respondents

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Appearance :
MR MA KHARADI for Petitioner(s) : 1,
MR AY KOGJE AGP for Respondent Nos.1 to 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/11/2006

ORAL JUDGMENT

1. Heard Mr.M.A. Kharadi, learned counsel for the petitioner and Mr.A.Y. Kogje, learned Assistant Government Pleader for the – State.

2. Revenue Entry No.643 came to be made in favour of the

petitioner on the strength of a Will alleged tobe executed by Mohanbhai Ramolbhai Vasava (father of the appellant No.3) on 5/4/1988. It appears from the record that the respondent No.3, son of the executant, took up the revision before the Collector and submitted that as he was successor / heir of the deceased, his name was required to be mutated, probably some agreement was arrived at between the petitioner and the respondent No.3 and as consequence to the same, on 8/10/1992, parties submitted an application to the Talati-cum-Mantri of Village Nagama, Simodra Group. However, the Collector vide his order dtd.1/8/1993 directed recall of the entry and further directed that the names of all successors / heirs of the deceased Mohanbhai be mutated. Being aggrieved by the said order, the petitioner took up the matter before the Deputy Secretary, Revenue Department (Appeals/Disputes), but the said revision petition suffered a dismissal.

3. Mr.Kharadi, learned counsel for the petitioner submits that the present is a matter where there was no dispute between the successors and the present petitioner, therefore, an order against the interest of the present petitioner could not be made.

4. In the opinion of this Court, the petitioner if is well advised, must obtain a Probate of the Will, because grant of the Probate would clinch the issue and confirm the rights. The grant of the Probate would be a judgment in rem and would even otherwise bind the State and its officers. Disputed question, that whether the petitioner succeeded under the Will or not, cannot be decided in this proceedings. The petition is dismissed. Rule is discharged. Interim relief stands vacated. No costs.

(R.S. GARG,J.)

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